

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JULY 16, 2015

AMENDED IN ASSEMBLY JULY 7, 2015

AMENDED IN SENATE MAY 12, 2015

AMENDED IN SENATE MARCH 19, 2015

SENATE BILL

No. 209

Introduced by Senator Pavley

February 11, 2015

An act to amend Sections 607, 2207, 2714, 2733, 2770, 2772, 2773.1, 2774, 2774.1, 2774.4, and 2776 of, and to add Sections 2006.5, 2736, 2772.1, and 2773.4 to, the Public Resources Code, relating to surface mining.

LEGISLATIVE COUNSEL'S DIGEST

SB 209, as amended, Pavley. Surface mining: inspections: financial assurances: reclamation plans.

(1) Existing law establishes the Office of Mine Reclamation within the Department of Conservation. Existing law requires the State Mining and Geology Board to impose, by regulation, an annual reporting fee on the operators of all active and idle mining operations. Existing law requires the maximum amount of the annual fee imposed on each mining operation to not exceed \$4,000. Existing law limits the maximum amount of the total revenue generated from the reporting fee to no more than \$3,500,000, as specified.

This bill would instead establish the Division of Mines within the department under the direction of the Supervisor of Mines and Reclamation. The bill also would raise the maximum amount of the

annual reporting fee to \$10,000 per mining operation, except as specified. The bill would raise the maximum amount of the total revenue generated from the reporting fee to \$8,000,000, as specified.

(2) The Surface Mining and Reclamation Act of 1975 prohibits a person, with exceptions, from conducting surface mining operations unless, among other things, a permit is obtained from, a specified reclamation plan is submitted to and approved by, and financial assurances for reclamation have been approved by the lead agency for the operation of the surface mining operation.

This bill would revise and recast provisions of the act related to the approval of reclamation plans and, among other things, would require a reclamation plan filed by an operator of a surface mining operation with a lead agency to include specified reclamation maps; require a lead agency, when submitting a proposed final reclamation plan to the Director of Conservation, to incorporate specified items of information and documents in the submitted reclamation plan within certain timeframes; and require the director to take certain actions upon receiving a proposed final reclamation plan. By adding to the duties of a local government acting as a lead agency under the act, this bill would impose a state-mandated local program.

This bill also would require a lead agency or the board to conduct a specified public hearing if the lead agency has evidence that an operator is financially incapable of performing reclamation in accordance with its approved reclamation plan or that the operator has abandoned a surface mining operation without completing reclamation and to take appropriate actions to seize the operator's financial assurances.

This bill would revise and recast provisions of the act related to the proof of financial assurances, as defined, and, among other things, would require an operator to establish an appropriate financial assurance mechanism within 30 days of a sale or transfer of a surface mining operation; require a lead agency to submit a surface mining operation's proposed financial assurance cost estimate with a specified report to the director for review, as specified; and require the director to take certain actions upon receiving a financial assurance cost estimate from a lead agency. By adding to the duties of a local government acting as a lead agency under the act, this bill would impose a state-mandated local program.

This bill would require the Department of Conservation and the board, in consultation with the Board for Professional Engineers, Land Surveyors, and Geologists, to adopt regulations that set forth the

minimum qualifications for a person conducting an inspection of a surface mining operation, as specified. The bill also would require the department to establish, no later than July 1, 2016, a training program for all surface mine inspectors, as specified.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 607 of the Public Resources Code is
2 amended to read:

3 607. The work of the department shall be divided into at least
4 the following:

- 5 (a) California Geological Survey.
- 6 (b) Division of Oil, Gas, and Geothermal Resources.
- 7 (c) Division of Land Resource Protection.
- 8 (d) Division of Mines.

9 SEC. 2. Section 2006.5 is added to the Public Resources Code,
10 to read:

11 2006.5. "Supervisor of Mines and Reclamation" means the
12 individual directing the Division of Mines established pursuant to
13 subdivision (d) of Section 607.

14 SEC. 3. Section 2207 of the Public Resources Code is amended
15 to read:

16 2207. (a) The owner or the operator of a mining operation
17 within the state shall forward to the director annually, not later
18 than a date established by the director, upon forms approved by
19 the board from time to time, a report that identifies all of the
20 following:

- 21 (1) The name, address, and telephone number of the person,
22 company, or other owner of the mining operation.
- 23 (2) The name, address, and telephone number of a designated
24 agent who resides in this state, and who will receive and accept
25 service of all orders, notices, and processes of the lead agency,
26 board, director, or court.

(3) The location of the mining operation, its name, its mine number as issued by the Division of Mines or the director, its section, township, range, latitude, longitude, and approximate boundaries of the mining operation marked on a United States Geological Survey 7 ½-minute or 15-minute quadrangle map.

(4) The lead agency.

(5) The approval date of the mining operation's reclamation plan.

(6) The mining operation's status as active, idle, reclaimed, or in the process of being reclaimed.

(7) The commodities produced by the mine and the type of mining operation.

(8) Proof of annual inspection by the lead agency.

(9) Proof of the most recently approved financial cost estimate and the approved financial assurance cost mechanism.

(10) Ownership of the property, including government agencies, if applicable, by the assessor's parcel number, and total assessed value of the mining operation.

(11) The approximate permitted size of the mining operation subject to Chapter 9 (commencing with Section 2710), in acres.

(12) The approximate total acreage of land newly disturbed by the mining operation during the previous calendar year.

(13) The approximate total of disturbed acreage reclaimed during the previous calendar year.

(14) The approximate total unreclaimed disturbed acreage remaining as of the end of the calendar year.

(15) The total production for each mineral commodity produced during the previous year.

(16) A copy of any approved reclamation plan and any amendments or conditions of approval to any existing reclamation plan approved by the lead agency.

(b) (1) Every year, not later than the date established by the director, the person submitting the report pursuant to subdivision (a) shall forward to the lead agency, upon forms furnished by the board, a report that provides all of the information specified in subdivision (a).

(2) The owner or operator of a mining operation shall allow access to the property to any governmental agency or the agent of any company providing financial assurances in connection with the reclamation plan in order that the reclamation can be carried

1 out by the entity or company, in accordance with the provisions
2 of the reclamation plan.

3 (c) Subsequent reports shall include only changes in the
4 information submitted for the items described in subdivision (a),
5 except that, instead of the approved reclamation plan, the reports
6 shall include any reclamation plan amendments approved during
7 the previous year. The reports shall state whether review of a
8 reclamation plan, financial assurances, or an interim management
9 plan is pending under subdivision (b) or (h) of Section 2770, or
10 whether an appeal before the board or lead agency governing body
11 is pending under subdivision (e) or (h) of Section 2770. The
12 director shall notify the person submitting the report and the
13 owner's designated agent in writing that the report and the fee
14 required pursuant to subdivision (d) have been received, specify
15 the mining operation's mine number if one has not been issued by
16 the Division of Mines, and notify the person and agent of any
17 deficiencies in the report within 90 days of receipt. That person
18 or agent shall have 30 days from receipt of the notification to
19 correct the noted deficiencies and forward the revised report to the
20 director and the lead agency. Any person who fails to comply with
21 this section, or knowingly provides incorrect or false information
22 in reports required by this section, may be subject to an
23 administrative penalty as provided in subdivision (c) of Section
24 2774.1.

25 (d) (1) The board shall impose, by regulation, pursuant to
26 paragraph (2), an annual reporting fee on, and method for collecting
27 annual fees from, each active or idle mining operation. The
28 maximum fee for any single mining operation may not exceed ten
29 thousand dollars (\$10,000) annually and may not be less than one
30 hundred dollars (\$100) annually, as adjusted for the cost of living
31 as measured by the California Consumer Price Index for all urban
32 consumers, calendar year averages, using the percentage change
33 in the previous year, except that the maximum fee for any single
34 mining operation shall not exceed six thousand dollars (\$6,000)
35 in the 2016–17 fiscal year and eight thousand dollars (\$8,000) in
36 the 2017–18 fiscal year.

37 (2) (A) The board shall adopt, by regulation, a schedule of fees
38 authorized under paragraph (1) to cover the department's cost in
39 carrying out this section and Chapter 9 (commencing with Section
40 2710), as reflected in the Governor's proposed Budget, and may

1 adopt those regulations as emergency regulations. In establishing
2 the schedule of fees to be paid by each active and idle mining
3 operation, the fees shall be calculated on an equitable basis
4 reflecting the size and type of operation. The board shall also
5 consider the total assessed value of the mining operation, the
6 acreage disturbed by mining activities, and the acreage subject to
7 the reclamation plan.

8 (B) Regulations adopted pursuant to this subdivision shall be
9 adopted by the board in accordance with the Administrative
10 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
11 Part 1 of Division 3 of Title 2 of the Government Code). The
12 adoption of any emergency regulations pursuant to this subdivision
13 shall be considered necessary to address an emergency and shall
14 be considered by the Office of Administrative Law to be necessary
15 for the immediate preservation of the public peace, health, safety,
16 and general welfare.

17 (3) The total revenue generated by the reporting fees may not
18 exceed, and may be less than, the amount of eight million dollars
19 (\$8,000,000), as adjusted for the cost of living as measured by the
20 California Consumer Price Index for all urban consumers, calendar
21 year averages, using the percentage change in the previous year,
22 beginning with the 2016–17 fiscal year and annually thereafter. If
23 the director determines that the revenue collected during the
24 preceding fiscal year was greater or less than the cost to operate
25 the program, the board shall adjust the fees to compensate for the
26 overcollection or undercollection of revenues.

27 (4) (A) The reporting fees established pursuant to this
28 subdivision shall be deposited in the Mine Reclamation Account,
29 which is hereby created. Any fees, penalties, interest, fines, or
30 charges collected by the director or board pursuant to this chapter
31 or Chapter 9 (commencing with Section 2710) shall be deposited
32 in the Mine Reclamation Account. The money in the account shall
33 be available to the department and board, upon appropriation by
34 the Legislature, for the purpose of carrying out this section and
35 complying with Chapter 9 (commencing with Section 2710), which
36 includes, but is not limited to, classification and designation of
37 areas with mineral resources of statewide or regional significance,
38 reclamation plan and financial assurance review, mine inspection,
39 and enforcement.

1 (B) (i) In addition to reporting fees, the board shall collect five
2 dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of
3 silver mined within the state and shall deposit the fees collected
4 in the Abandoned Mine Reclamation and Minerals Fund
5 Subaccount, which is hereby created in the Mine Reclamation
6 Account. The department may expend the moneys in the
7 subaccount, upon appropriation by the Legislature, for only the
8 purposes of Section 2796.5 and as authorized herein for the
9 remediation of abandoned mines.

10 (ii) Notwithstanding subdivision (j) of Section 2796.5, fees
11 collected pursuant to clause (i) may also be used to remediate
12 features of historic abandoned mines and lands that they impact.
13 For the purposes of this section, historic abandoned mines are
14 mines for which operations have been conducted before January
15 1, 1976, and include, but are not limited to, historic gold and silver
16 mines.

17 (5) In case of late payment of the reporting fee, a penalty of not
18 less than one hundred dollars (\$100) or 10 percent of the amount
19 due, whichever is greater, plus interest at the rate of 1 ½ percent
20 per month, computed from the delinquent date of the assessment
21 until and including the date of payment, shall be assessed. New
22 mining operations that have not submitted a report shall submit a
23 report prior to commencement of operations. The new operation
24 shall submit its fee according to the reasonable fee schedule
25 adopted by the board, and the month that the report is received
26 shall become that operation's anniversary month.

27 (e) The lead agency, or the board when acting as the lead agency,
28 may impose a fee upon each mining operation to cover the
29 reasonable costs incurred in implementing this chapter and Chapter
30 9 (commencing with Section 2710).

31 (f) For purposes of this section, "mining operation" means a
32 mining operation of any kind or character whatever in this state,
33 including, but not limited to, a mining operation that is classified
34 as a "surface mining operation" as defined in Section 2735, unless
35 excepted by Section 2714. For the purposes of fee collections only,
36 "mining operation" may include one or more mines operated by
37 a single operator or mining company on one or more sites, if the
38 total annual combined mineral production for all sites is less than
39 100 troy ounces for precious metals, if precious metals are the
40 primary mineral commodity produced, or less than 100,000 short

1 tons if the primary mineral commodity produced is not precious
2 metals.

3 (g) Any information in reports submitted pursuant to subdivision
4 (a) that includes or otherwise indicates the total mineral production,
5 reserves, or rate of depletion of any mining operation may not be
6 disclosed to any member of the public, as defined in subdivision
7 (b) of Section 6252 of the Government Code. Other portions of
8 the reports are public records unless excepted by statute. Statistical
9 bulletins based on these reports and published under Section 2205
10 shall be compiled to show, for the state as a whole and separately
11 for each lead agency, the total of each mineral produced therein.
12 In order not to disclose the production, reserves, or rate of depletion
13 from any identifiable mining operation, no production figure shall
14 be published or otherwise disclosed unless that figure is the
15 aggregated production of not less than three mining operations. If
16 the production figure for any lead agency would disclose the
17 production, reserves, or rate of depletion of less than three mining
18 operations or otherwise permit the reasonable inference of the
19 production, reserves, or rate of depletion of any identifiable mining
20 operation, that figure shall be combined with the same figure of
21 not less than two other lead agencies without regard to the location
22 of the lead agencies. The bulletin shall be published annually by
23 June 30 or as soon thereafter as practicable.

24 (h) The approval of a form by the board pursuant to this section
25 is not the adoption of a regulation for purposes of the
26 Administrative Procedure Act (Chapter 3.5 (commencing with
27 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
28 Code) and is not subject to that act.

29 SEC. 4. Section 2714 of the Public Resources Code is amended
30 to read:

31 2714. This chapter does not apply to any of the following
32 activities:

33 (a) Excavations or grading of lands conducted for farming.

34 (b) Onsite excavation and onsite earthmoving activities that are
35 integral and necessary for the construction of structures and that
36 are undertaken to prepare a site for the construction of those
37 structures, including landscaping or other land improvements
38 associated with those structures, including the related excavation,
39 grading, compaction, or the creation of fills, road cuts, and

1 embankments, whether or not surplus materials are exported from
2 the site, subject to all of the following conditions:

3 (1) All required permits for the construction and any associated
4 landscaping or related land improvements have been approved by
5 a public agency in accordance with applicable provisions of state
6 law and locally adopted plans and ordinances, including, but not
7 limited to, the California Environmental Quality Act (Division 13
8 (commencing with Section 21000)).

9 (2) The lead agency's approval of the construction project
10 included consideration of the onsite excavation and onsite
11 earthmoving activities pursuant to the California Environmental
12 Quality Act (Division 13 (commencing with Section 21000)).

13 (3) The approved construction project is consistent with the
14 general plan or zoning of the site.

15 (4) Surplus materials shall not be exported from the site unless
16 and until actual construction work has commenced and shall cease
17 if it is determined that construction activities have terminated, have
18 been indefinitely suspended, or are no longer being actively
19 pursued.

20 (c) Operation of a plant site used for mineral processing,
21 including associated onsite structures, equipment, machines, tools,
22 or other materials, including the onsite stockpiling and onsite
23 recovery of mined materials, subject to all of the following
24 conditions:

25 (1) The plant site is located on lands designated for industrial
26 or commercial uses in the applicable county or city general plan.

27 (2) The plant site is located on lands zoned industrial or
28 commercial or are contained within a zoning category intended
29 exclusively for industrial activities by the applicable city or county.

30 (3) None of the minerals being processed are being extracted
31 onsite.

32 (4) All reclamation work has been completed pursuant to the
33 approved reclamation plan for any mineral extraction activities
34 that occurred onsite after January 1, 1976.

35 (d) Prospecting for or the extraction of minerals for commercial
36 purposes where the removal of overburden or mineral product
37 totals less than 1,000 cubic yards in any one location and the total
38 surface area disturbed is less than one acre.

1 (e) Surface mining operations that are required by federal law
2 in order to protect a mining claim, if those operations are conducted
3 solely for that purpose.

4 (f) Any other surface mining operations that the board
5 determines to be of an infrequent nature and that involve only
6 minor surface disturbances.

7 (g) The solar evaporation of sea water or bay water for the
8 production of salt and related minerals.

9 (h) Emergency excavations or grading conducted by the
10 Department of Water Resources or the Central Valley Flood
11 Protection Board for the purpose of averting, alleviating, repairing,
12 or restoring damage to property due to imminent or recent floods,
13 disasters, or other emergencies.

14 (i) (1) Surface mining operations conducted on lands owned
15 or leased, or upon which easements or rights-of-way have been
16 obtained, by the Department of Water Resources for the purpose
17 of the State Water Resources Development System or flood control,
18 and surface mining operations on lands owned or leased, or upon
19 which easements or rights-of-way have been obtained, by the
20 Central Valley Flood Protection Board for the purpose of flood
21 control, if the Department of Water Resources adopts, after
22 submission to and consultation with, the department, a reclamation
23 plan for lands affected by these activities, and those lands are
24 reclaimed in conformance with the standards specified in
25 regulations of the board adopted pursuant to this chapter. The
26 Department of Water Resources shall provide an annual report to
27 the department by the date specified by the department on these
28 mining activities.

29 (2) Nothing in this subdivision shall require the Department of
30 Water Resources or the Central Valley Flood Protection Board to
31 obtain a permit or secure approval of a reclamation plan from any
32 city or county in order to conduct surface mining operations
33 specified in paragraph (1). Nothing in this subdivision shall
34 preclude the bringing of an enforcement action pursuant to Section
35 2774.1, if it is determined that a surface mine operator, acting
36 under contract with the Department of Water Resources or the
37 Central Valley Flood Protection Board on lands other than those
38 owned or leased, or upon which easements or rights-of-way have
39 been obtained, by the Department of Water Resources or the

Central Valley Flood Protection Board, is otherwise not in compliance with this chapter.

(j) (1) Excavations or grading for the exclusive purpose of obtaining materials for roadbed construction and maintenance conducted in connection with timber operations or forest management on land owned by the same person or entity. This exemption is limited to excavation and grading that is conducted adjacent to timber operation or forest management roads and shall not apply to onsite excavation or grading that occurs within 100 feet of a Class One watercourse or 75 feet of a Class Two watercourse, or to excavation for materials that are, or have been, sold for commercial purposes.

(2) This exemption shall be available only if slope stability and erosion are controlled in accordance with subdivision (f) of Section 3704 and subdivision (d) of Section 3706 of Title 14 of the California Code of Regulations and, upon closure of the site, the person closing the site implements, where necessary, revegetation measures and postclosure uses in consultation with the Department of Forestry and Fire Protection.

(k) Excavations, grading, or other earthmoving activities in an oil or gas field that are integral to and necessary for ongoing operations for the extraction of oil or gas that comply with all of the following conditions:

(1) The operations are being conducted in accordance with Division 3 (commencing with Section 3000).

(2) The operations are consistent with any general plan or zoning applicable to the site.

(3) The earthmoving activities are within oil or gas field properties under a common owner or operator.

(4) No excavated materials are sold for commercial purposes.

(l) (1) The immediate excavation or grading of lands affected by a natural disaster for the purpose of restoring those lands to their prior condition.

(2) The immediate removal of material deposited by a flood onto lands being farmed for the purpose of restoring those lands to their prior condition.

SEC. 5. Section 2733 of the Public Resources Code is amended to read:

2733. "Reclamation" means the combined process of land treatment that minimizes water degradation, air pollution, damage

1 to aquatic or wildlife habitat, flooding, erosion, and other adverse
2 effects from surface mining operations, including adverse surface
3 effects incidental to underground mines, so that mined lands are
4 reclaimed to a usable condition that is readily adaptable for
5 alternate land uses and create no danger to public health or safety.
6 The process may extend to affected lands surrounding mined lands,
7 and may require backfilling, grading, resoiling, revegetation, soil
8 compaction, slope stabilization, or other measures.

9 SEC. 6. Section 2736 is added to the Public Resources Code,
10 to read:

11 2736. “Financial assurance” means an approved current
12 financial assurance cost estimate and a financial assurance
13 mechanism that is at least equal to the current approved financial
14 assurance cost estimate.

15 SEC. 7. Section 2770 of the Public Resources Code is amended
16 to read:

17 2770. (a) Except as provided in this section, a person shall not
18 conduct surface mining operations unless a permit is obtained
19 from, a reclamation plan has been submitted to and approved by,
20 and financial assurances for reclamation have been approved by
21 the lead agency for the operation pursuant to this article.

22 (b) A person with an existing surface mining operation who has
23 vested rights pursuant to Section 2776 and who does not have an
24 approved reclamation plan shall submit a reclamation plan to the
25 lead agency not later than March 31, 1988. If a reclamation plan
26 application is not on file by March 31, 1988, the continuation of
27 the surface mining operation is prohibited until a reclamation plan
28 is submitted to the lead agency.

29 (c) [Reserved]

30 (d) [Reserved]

31 (e) A person who, based on the evidence of the record, can
32 substantiate that a lead agency has either (1) failed to act according
33 to due process or has relied on considerations not related to the
34 specific applicable requirements of Sections 2772, 2773, and
35 2773.1, and the lead agency surface mining ordinance adopted
36 pursuant to subdivision (a) of Section 2774, in reaching a decision
37 to deny approval of a reclamation plan or financial assurances for
38 reclamation, or (2) failed to act within a reasonable time of receipt
39 of a completed application, may appeal that action or inaction to
40 the board.

1 (f) The board may decline to hear an appeal if it determines that
2 the appeal raises no substantial issues related to the lead agency's
3 review pursuant to this section.

4 (g) Appeals that the board does not decline to hear shall be
5 scheduled and heard at a public hearing within 45 days of the filing
6 of the appeal or a longer period as may be mutually agreed upon
7 by the board and the person filing the appeal. In hearing an appeal,
8 the board shall only determine whether the reclamation plan or the
9 financial assurances meet the applicable requirements of Sections
10 2772, 2773, and 2773.1 and the lead agency surface mining
11 ordinance adopted pursuant to subdivision (a) of Section 2774. A
12 reclamation plan or financial assurances determined to meet these
13 requirements shall be approved. A reclamation plan or financial
14 assurances determined not to meet these requirements shall be
15 returned to the person filing the appeal with a notice of deficiencies,
16 who shall be granted once only a period of 30 days, or a longer
17 period mutually agreed upon by the operator and the board, to
18 correct the noted deficiencies and submit the revised reclamation
19 plan or the revised financial assurances to the lead agency for
20 review and approval.

21 (h) (1) Within 90 days of a surface mining operation becoming
22 idle, as defined in Section 2727.1, the operator shall submit to the
23 lead agency for review and approval an interim management plan.
24 The review and approval of an interim management plan shall not
25 be considered a project for purposes of the California
26 Environmental Quality Act (Division 13 (commencing with Section
27 21000)). The approved interim management plan shall be
28 considered an amendment to the surface mining operation's
29 approved reclamation plan for purposes of this chapter. The interim
30 management plan shall provide measures the operator will
31 implement to maintain the site in compliance with this chapter,
32 including, but not limited to, all permit conditions.

33 (2) ~~The~~ *Except for an interim management plan for a borrow*
34 *pit surface mining operation, owned or operated by the lead agency*
35 *solely for use by the lead agency, an* interim management plan
36 may remain in effect for a period not to exceed five years, at which
37 time the lead agency shall do one of the following:

38 (A) Renew the interim management plan for an additional period
39 not to exceed five years, which may be renewed for one additional
40 five-year renewal period at the expiration of the first five-year

1 renewal period, if the lead agency finds that the surface mining
2 operator has complied fully with the interim management plan.

3 (B) Require the operator to commence reclamation in accordance
4 with its approved reclamation plan.

5 (3) The financial assurances required by Section 2773.1 shall
6 remain in effect during the period that the surface mining operation
7 is idle. If the surface mining operation is still idle after the
8 expiration of its interim management plan, the surface mining
9 operation shall commence reclamation in accordance with its
10 approved reclamation plan.

11 (4) Within 60 days of the receipt of the interim management
12 plan or a longer period mutually agreed upon by the lead agency
13 and the operator, the lead agency shall review and approve the
14 plan in accordance with its ordinance adopted pursuant to
15 subdivision (a) of Section 2774, so long as the plan satisfies the
16 requirements of this subdivision, and so notify the operator in
17 writing. Otherwise, the lead agency shall notify the operator in
18 writing of any deficiencies in the plan. The operator shall have 30
19 days, or a longer period mutually agreed upon by the operator and
20 the lead agency, to submit a revised plan.

21 (5) The lead agency shall approve or deny approval of the
22 revised interim management plan within 60 days of receipt. If the
23 lead agency denies approval of the revised interim management
24 plan, the operator may appeal that action to the lead agency's
25 governing body, which shall schedule a public hearing within 45
26 days of the filing of the appeal or a longer period mutually agreed
27 upon by the operator and the governing body.

28 (6) Unless review of an interim management plan is pending
29 before the lead agency or an appeal is pending before the lead
30 agency's governing body, a surface mining operation that remains
31 idle for over one year after becoming idle, as defined in Section
32 2727.1, without obtaining approval of an interim management plan
33 shall be considered abandoned and the operator shall commence
34 and complete reclamation in accordance with the approved
35 reclamation plan.

36 (i) An enforcement action that may be brought against a surface
37 mining operation for operating without an approved reclamation
38 plan, financial assurance, or interim management plan shall be
39 held in abeyance pending review pursuant to subdivision (b) or
40 (h), or the resolution of an appeal filed with the board pursuant to

subdivision (e), or with a lead agency governing body pursuant to subdivision (h).

(j) Notwithstanding paragraph (1) of subdivision (b) of Section 2774, a lead agency may conduct an inspection of a borrow pit surface mining operation, owned or operated by the lead agency solely for use by the lead agency, once every two calendar years during a period when the borrow pit surface mining operation is idle.

SEC. 8. Section 2772 of the Public Resources Code is amended to read:

2772. (a) The reclamation plan shall be filed with the lead agency, on a form provided by the lead agency, by any person who owns, leases, or otherwise controls or operates on all or any portion of any mined lands and who plans to conduct surface mining operations on the lands.

~~(b) [Reserved]~~

(b) A reclamation plan for a borrow pit surface mining operation, owned or operated by the lead agency solely for use by the lead agency, shall, in addition to the other requirements of a reclamation plan, include an interim management plan that shall maintain the site in compliance with this chapter during a period when the borrow pit surface mining operation is idle.

(c) The reclamation plan shall include all of the following information and documents:

(1) The name and address of the surface mining operator and the names and addresses of any persons designated by the operator as an agent for the service of process.

(2) The anticipated quantity and type of minerals for which the surface mining operation is to be conducted.

(3) The proposed dates for the initiation of mining operations and the completion of mining and reclamation of the surface mining operation.

(4) The maximum anticipated depth of the surface mining operation.

(5) A reclamation plan map or maps that shall include all of the following:

(A) Size and legal description of the lands that will be affected by the surface mining operation and the names and addresses of the owners of all surface interests and mineral interests in the lands.

1 (B) Clearly defined and accurately drawn property lines,
2 setbacks, easements, and the reclamation plan boundary.

3 (C) Existing topography and final topography depicted with
4 contour lines drawn at appropriate intervals for the site's
5 conditions.

6 (D) Detailed geologic description of the area of the surface
7 mining operation.

8 (E) Location of railroads, utility facilities, access roads,
9 temporary roads to be reclaimed, and any roads remaining for the
10 approved end use.

11 (F) All maps, diagrams, or calculations that require preparation
12 in accordance with the Professional Engineers Act (Chapter 7
13 (commencing with Section 6700) of Division 3 of the Business
14 and Professions Code), the Geologist and Geophysicist Act
15 (Chapter 12.5 (commencing with Section 7800) of Division 3 of
16 the Business and Professions Code), or the Professional Land
17 Surveyors' Act (Chapter 15 (commencing with Section 8700) of
18 Division 3 of the Business and Professions Code) shall be prepared
19 by an appropriately licensed California-licensed professional, shall
20 include his or her license number and name, and shall bear the
21 signature and seal of the licensee.

22 (6) A description of and a plan for the type of surface mining
23 to be employed and a time schedule that will provide for the
24 completion of surface mining on each segment of the mined lands
25 so that reclamation can be initiated at the earliest possible time on
26 those portions of the mined lands that will not be subject to further
27 disturbance by the surface mining operation.

28 (7) A description of the proposed use or potential uses of the
29 mined lands after reclamation and evidence that all owners of a
30 possessory interest in the land have been notified of the proposed
31 use or potential uses.

32 (8) A description of the manner in which reclamation, adequate
33 for the proposed use or potential uses, will be accomplished,
34 including both of the following:

35 (A) A description of the manner in which known contaminants
36 will be controlled and mining waste will be disposed.

37 (B) A description of the manner in which affected streambed
38 channels and streambanks will be rehabilitated to a condition that
39 minimizes erosion and sedimentation.

1 (9) An assessment of the effect of implementation of the
2 reclamation plan on future mining in the area.

3 (10) A statement that the person submitting the reclamation
4 plan accepts responsibility for reclaiming the mined lands in
5 accordance with the reclamation plan.

6 (11) Any other information that the lead agency may require
7 by ordinance.

8 (d) An item of information or a document required pursuant to
9 this chapter, including subdivision (c), that has already been
10 prepared as part of a permit application for the surface mining
11 operation, or as part of an environmental document prepared for
12 the project pursuant to the California Environmental Quality Act
13 (Division 13 (commencing with Section 21000)), or required as a
14 condition of approval, shall be included in the reclamation plan.
15 Regulatory aspects that are solely of a local concern shall not be
16 included in the reclamation plan. To the extent the information or
17 document referenced in the reclamation plan is used to meet the
18 requirements of this chapter, including subdivision (c), the
19 information or document shall become part of the reclamation plan
20 and shall be subject to all other requirements of this chapter.

21 (e) This section does not limit or expand the Supervisor of Mines
22 and Reclamation's authority or responsibility to review a document
23 in accordance with the California Environmental Quality Act
24 (Division 13 (commencing with Section 21000)).

25 SEC. 9. Section 2772.1 is added to the Public Resources Code,
26 to read:

27 2772.1. (a) (1) Prior to approving a surface mining operation's
28 reclamation plan or plan amendments, the lead agency shall submit
29 the proposed final reclamation plan or amendments to the director
30 for review. All documentation for the submission shall be submitted
31 to the director at one time.

32 (2) An item of information or a document required pursuant to
33 this chapter, including subdivision (c) of Section 2772, that has
34 been prepared as part of a permit application for the surface mining
35 operation, not including aspects that are solely of a local concern,
36 or as part of an environmental document prepared for the project
37 pursuant to the California Environmental Quality Act (Division
38 13 (commencing with Section 21000)) shall be incorporated into
39 the proposed final reclamation plan. An item of information or a
40 document that is incorporated shall be inserted into the

1 corresponding section of the proposed final reclamation plan or
2 attached to the proposed final reclamation plan with a specific
3 reference in the corresponding section of the proposed final
4 reclamation plan. Any information or document incorporated into
5 the proposed final reclamation plan shall become part of the
6 approved reclamation plan and shall be subject to all other
7 requirements of this article.

8 (3) The lead agency shall certify to the director that the proposed
9 final reclamation plan is a complete submission and is in
10 compliance with all of the following:

11 (A) The applicable requirements of this chapter, including
12 subdivision (c) of Section 2772.

13 (B) Article 1 (commencing with Section 3500) of Chapter 8 of
14 Division 2 of Title 14 of the California Code of Regulations.

15 (C) The lead agency's surface mining ordinance in effect at the
16 time that the proposed final reclamation plan is submitted to the
17 director for review.

18 (b) (1) The director shall have 30 days from the date of receipt
19 of a proposed final reclamation plan or plan amendments submitted
20 pursuant to subdivision (a) to prepare written comments if the
21 director chooses.

22 (2) If the director determines that the lead agency's submission
23 pursuant to subdivision (a) is incomplete or that the submission
24 includes maps, diagrams, or calculations that require preparation
25 by an appropriately licensed California-licensed professional, the
26 director shall return the submission to the lead agency. The director
27 shall identify the incomplete components or those maps, diagrams,
28 or calculations that require completion by an appropriately licensed
29 California-licensed professional. The review by the director
30 pursuant to paragraph (1) shall not begin until the director receives
31 a complete submission, including maps, diagrams, or calculations
32 prepared by an appropriately licensed California-licensed
33 professional.

34 (3) (A) The lead agency shall review and evaluate and prepare
35 a written response to the director's comments received pursuant
36 to paragraph (1) describing the disposition of the major issues
37 raised by the comments. The lead agency shall submit the lead
38 agency's response to the director at least 30 days prior to the
39 intended approval of the proposed final reclamation plan or plan

1 amendment. The lead agency's response shall include either of the
2 following:

3 (i) A description of how the lead agency proposes to adopt the
4 director's comments to the proposed final reclamation plan or plan
5 amendment.

6 (ii) A detailed description of the reasons why the lead agency
7 proposes not to adopt the director's comments.

8 (B) Copies of any written comments received and responses
9 prepared by the lead agency pursuant to subparagraph (A) shall
10 be forwarded to the operator.

11 (C) (i) The lead agency shall give the director at least 30 days'
12 notice of the time, place, and date of the hearing at which the
13 proposed final reclamation plan or plan amendment is scheduled
14 to be approved by the lead agency.

15 (ii) If no hearing is required by this chapter, the local ordinance,
16 or other state law, the lead agency shall provide 30 days' notice
17 to the director that the lead agency intends to approve the proposed
18 final reclamation plan or plan amendment.

19 (D) Within 30 days following approval of the reclamation plan,
20 the lead agency shall provide the director notice of the approval
21 and a statement that identifies any additional conditions or other
22 permit requirements imposed upon the surface mining operation.
23 During that time, the department shall retain all of its powers,
24 duties, and authorities pursuant to this chapter. The lead agency
25 shall provide, as soon as practicable, but no later than 60 days after
26 approval of the reclamation plan, both of the following:

27 (i) Certified copies of all maps, diagrams, or calculations signed
28 and sealed by an appropriately licensed California-licensed
29 professional.

30 (ii) A certified copy of the approved reclamation plan
31 incorporating all approved modifications to the proposed final
32 reclamation plan.

33 (4) To the extent there is a conflict between the comments of a
34 trustee agency or a responsible agency that are based on that
35 agency's statutory or regulatory authority and the comments of
36 other commenting agencies that are received by the lead agency
37 pursuant to the California Environmental Quality Act (Division
38 13 (commencing with Section 21000)) regarding a reclamation
39 plan or plan amendments, the lead agency shall consider only the
40 comments of the trustee agency or responsible agency.

(c) A lead agency shall notify the director of the filing of an application for a permit to conduct surface mining operations within 30 days of an application being filed with the lead agency. By July 1, 1991, each lead agency shall submit to the director for every active or idle mining operation within its jurisdiction, a copy of the mining permit required pursuant to Section 2774, and any conditions or amendments to those permits. By July 1 of each subsequent year, the lead agency shall submit to the director for each active or idle mining operation a copy of any permit or reclamation plan amendments, as applicable, or a statement that there have been no changes during the previous year. Failure to file with the director the information required pursuant to this section shall be a cause for action under Section 2774.4.

(d) This section does not limit or expand the Supervisor of Mines and Reclamation's authority or responsibility to review a document in accordance with the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

SEC. 10. Section 2773.1 of the Public Resources Code is amended to read:

2773.1. (a) Lead agencies shall require financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operation's approved reclamation plan, as follows:

(1) Financial assurance mechanisms may take the form of surety bonds executed by an admitted surety insurer, as defined in subdivision (a) of Section 995.120 of the Code of Civil Procedure, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the board pursuant to subdivision (e) that are at least equal to the annual financial assurance cost estimate that the lead agency reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved reclamation plan.

(2) The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.

(3) The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.

1 (4) Each financial assurance mechanism shall be made payable
2 to the lead agency and the department. A financial assurance
3 mechanism shall not be released without the written consent of
4 the lead agency and the department. Financial assurance
5 mechanisms that were approved by the lead agency prior to January
6 1, 1993, and were made payable to the State Geologist shall be
7 considered payable to the department for purposes of this chapter.
8 However, if a surface mining operation has received approval of
9 its financial assurances from a public agency other than the lead
10 agency, the lead agency shall deem those financial assurances
11 adequate for purposes of this section, or shall credit them toward
12 fulfillment of the financial assurances required by this section, if
13 they are made payable to the public agency, the lead agency, and
14 the department and otherwise meet the requirements of this section.
15 In any event, if a lead agency and one or more public agencies
16 exercise jurisdiction over a surface mining operation, the total
17 amount of financial assurances required by the lead agency and
18 the public agencies for any one year shall not exceed that amount
19 which is necessary to perform reclamation of lands remaining
20 disturbed. For purposes of this paragraph, a “public agency” may
21 include a federal agency.

22 (b) (1) If the lead agency has evidence that an operator is
23 financially incapable of performing reclamation in accordance
24 with its approved reclamation land or that the operator has
25 abandoned the surface mining operation without completing
26 reclamation, the lead agency or the board shall conduct a public
27 hearing with notice of the hearing provided to the operator and the
28 department at least 30 days prior to the hearing.

29 (2) If the lead agency or the board, following the public hearing,
30 determines that the operator is financially incapable of performing
31 reclamation in accordance with its approved reclamation plan, or
32 has abandoned its surface mining operation without completing
33 reclamation, either the lead agency or the director shall do all of
34 the following:

35 (A) Notify the operator by personal service or certified mail
36 that the lead agency or the director intends to take appropriate
37 action to seize the financial assurances and specify the reasons for
38 so doing.

39 (B) (i) Proceed to take appropriate action to seize the financial
40 assurances and use the proceeds from the financial assurances to

1 conduct and complete reclamation in accordance with the approved
2 reclamation plan.

3 (ii) If the surface mining operation cannot be reclaimed in
4 accordance with its approved reclamation plan or the financial
5 assurances are inadequate to reclaim in accordance with the
6 approved reclamation plan, the lead agency or the director may
7 use the proceeds of the financial assurances to reclaim or remediate
8 mining disturbances as appropriate for the site conditions, as
9 determined by the lead agency and the director. The proceeds of
10 the financial assurances shall not be used for any other purpose.

11 (iii) The operator is responsible for the costs of conducting and
12 completing reclamation in accordance with the approved
13 reclamation plan or a remediation plan developed pursuant to this
14 section, as determined to be appropriate by the lead agency and
15 director, that are in excess of the proceeds of the financial
16 assurances.

17 (c) Financial assurances shall no longer be required of a surface
18 mining operation, and shall be released, upon written concurrence
19 by the lead agency and the director, which shall be forwarded to
20 the operator, that reclamation has been completed in accordance
21 with the approved reclamation plan. If a surface mining operation
22 is sold or ownership is transferred to another person, the existing
23 financial assurances shall remain in force and shall not be released
24 by the lead agency and the director until new financial assurances
25 are secured from the new owner and have been approved by the
26 lead agency in accordance with Sections 2770 and 2773.1. Within
27 30 days of the sale or transfer of the surface mining operation, the
28 new operator shall establish an appropriate financial assurance
29 mechanism and sign a new statement pursuant to paragraph (10)
30 of subdivision (c) of Section 2772.

31 (d) The lead agency shall have primary responsibility to seize
32 financial assurances and to reclaim mine sites under subdivision
33 (b). However, in cases where the board is not the lead agency
34 pursuant to Section 2774.4, the director may act to seize financial
35 assurances and reclaim mine sites pursuant to subdivision (b) only
36 if both of the following occur:

37 (1) The financial incapability of the operator or the abandonment
38 of the mining operation has come to the attention of the director.

39 (2) The lead agency has been notified in writing by the director
40 of the financial incapability of the operator or the abandonment

1 of the mining operation for at least 15 days, the lead agency has
2 not taken appropriate measures to seize the financial assurances
3 and reclaim the mine site, and one of the following has occurred:

4 (A) The lead agency has been notified in writing by the director
5 that failure to take appropriate measures to seize the financial
6 assurances or to reclaim the mine site shall result in actions being
7 taken against the lead agency under Section 2774.4.

8 (B) The director determines that there is a violation that amounts
9 to an imminent and substantial endangerment to the public health,
10 safety, or to the environment.

11 (C) The lead agency notifies the director in writing that its good
12 faith attempts to seize the financial assurances have not been
13 successful.

14 The director shall comply with subdivision (b) in seizing the
15 financial assurances and reclaiming mine sites.

16 (e) The board may adopt regulations specifying financial
17 assurance mechanisms other than surety bonds, irrevocable letters
18 of credit, and trust funds that the board determines are reasonably
19 available and adequate to ensure reclamation pursuant to this
20 chapter, but these mechanisms shall not include solely financial
21 tests or surety bonds executed by one or more personal sureties.
22 These mechanisms may include reclamation bond pool programs
23 or corporate financial tests, as described in subdivision (f),
24 combined with additional financial assurance mechanisms, as
25 identified in this section, that together ensure the completion of
26 reclamation in accordance with the approved reclamation plan.

27 (f) (1) Corporate financial tests shall provide for no more than
28 75 percent of the financial assurance cost estimate approved within
29 the last year. Use of a financial test shall meet all of the following
30 requirements:

31 (A) Be annually approved by both the lead agency and the
32 director and may be disallowed by either the lead agency or the
33 director.

34 (B) Include an assessment from an independent certified public
35 accountant using generally accepted accounting principles in the
36 United States.

37 (2) Corporate financial tests shall only be allowed after the board
38 adopts a regulation that establishes a comprehensive analysis of a
39 corporation's financial status that includes financial net worth;
40 income; liabilities, including other environmental assurances; and

1 assets located within the United States. The regulation shall include
2 additional measures to provide the lead agency or the director with
3 the recovery of costs associated with the full collection and
4 satisfaction of the financial assurance mechanisms.

5 (3) A surface mining operation shall have at least 25 percent of
6 the financial assurance cost estimate or four million dollars
7 (\$4,000,000), whichever is greater, in an acceptable financial
8 assurance mechanism other than a corporate financial test.

9 (4) *Subject to the requirements of this subdivision, an operator*
10 *of multiple surface mining operations may use a corporate*
11 *financial test that combines the financial assurance cost estimates*
12 *of each surface mining operation.*

13 (g) On or before March 1, 1993, the board shall adopt guidelines
14 to implement this section. The guidelines are exempt from the
15 requirements of the Administrative Procedure Act (Chapter 3.5
16 (commencing with Section 11340) of Part 1 of Division 3 of Title
17 2 of the Government Code) and are not subject to review by the
18 Office of Administrative Law.

19 SEC. 11. Section 2773.4 is added to the Public Resources Code,
20 to read:

21 2773.4. (a) (1) Prior to approving the financial assurances of
22 a surface mining operation pursuant to Sections 2770 and 2773.1,
23 the lead agency shall submit the proposed financial assurance cost
24 estimate, with a statement that it is adequate to reclaim the surface
25 mining operation in accordance with the approved reclamation
26 plan, to the director for review. All documentation for that
27 submission shall be complete and submitted to the director at one
28 time.

29 (2) If the director determines that the lead agency's submission
30 pursuant to paragraph (1) is incomplete, the director shall return
31 the submission to the lead agency, specifically noting those
32 elements of the cost estimate that are incomplete. The review by
33 the director pursuant to subdivision (b) shall not begin until the
34 director receives a complete submission.

35 (b) The director shall have 45 days from the date of receipt of
36 a complete financial ~~assurances~~ *assurance* cost estimate pursuant
37 to subdivision (a) to prepare written comments or request a
38 reassessment if the director chooses.

39 (c) (1) (A) If the director can demonstrate that the proposed
40 financial assurance cost estimate is inadequate to reclaim the

1 surface mining operation in accordance with the approved
2 reclamation plan, the director may request a reassessment by the
3 lead agency.

4 (B) If the director requests a reassessment of a financial
5 assurance cost estimate, the lead agency shall reassess and resubmit
6 the proposed financial assurance cost estimate within 45 days of
7 the director's request.

8 (2) If the lead agency or operator disagrees with the director's
9 request for reassessment, or the director determines that a financial
10 assurance cost estimate resubmitted pursuant to this subdivision
11 remains inadequate, the lead agency, operator, or director may
12 request a review hearing by the board.

13 (3) Financial assurance—costs *cost* estimates shall not be
14 approved pending the director's request for reassessment pursuant
15 to this subdivision.

16 (4) Financial assurance cost estimates determined to be
17 inadequate by the board shall be returned to the lead agency for
18 reassessment and resubmission to the director pursuant to this
19 section. Financial assurance cost estimates determined to be
20 adequate by the board may be approved by the lead agency.

21 (d) (1) The lead agency shall prepare a written response to the
22 director's comments, if any, describing the disposition of the major
23 issues raised by the director's comments. The lead agency shall
24 submit its proposed response to the director at least 30 days prior
25 to approval of the financial assurance cost estimate and shall
26 include either of the following:

27 (A) A description of how the lead agency proposes to adopt the
28 director's comments to the financial assurance cost estimate.

29 (B) A detailed description of the reasons why the lead agency
30 proposes not to adopt the director's comments.

31 (2) Copies of any written comments received and responses
32 prepared by the lead agency pursuant to paragraph (1) shall be
33 provided to the operator.

34 (3) (A) The lead agency shall give the director at least 30 days'
35 notice of the time, place, and date of the hearing at which the
36 financial assurance cost estimate is scheduled to be approved by
37 the lead agency.

38 (B) If no hearing is required by this chapter, the local ordinance,
39 or other state law, then the lead agency shall provide 30 days'

1 notice to the director that it intends to approve the financial
2 assurance cost estimate.

3 (4) The lead agency shall send to the director its final response
4 to the director's comments within 30 days of its approval of the
5 financial assurance cost estimate during which time the department
6 retains all of its powers, duties, and authorities pursuant to this
7 chapter.

8 (e) (1) Within 30 days of the lead agency's approval of the
9 financial assurance cost estimate, the operator shall provide the
10 lead agency and the director an appropriate financial assurance
11 mechanism that is at least equal to the approved financial assurance
12 cost estimate.

13 (2) Within 15 days of receipt of a financial assurance
14 mechanism, the lead agency and the director shall review the
15 financial assurance mechanism to determine if the type of
16 mechanism, including release instructions, complies with the
17 requirements of this chapter.

18 (3) Financial assurance mechanisms determined to be
19 noncompliant with this chapter shall be returned to the operator,
20 with instructions on how to correct the type or release instructions
21 of the financial assurance mechanism.

22 (f) To the extent there is a conflict between the comments of a
23 trustee agency or a responsible agency that are based on that
24 agency's statutory or regulatory authority and the comments of
25 other commenting agencies that are received by the lead agency
26 pursuant to the California Environmental Quality Act (Division
27 13 (commencing with Section 21000)) regarding a financial
28 assurance cost estimate or financial assurance mechanism, the lead
29 agency shall consider only the comments of the trustee agency or
30 responsible agency.

31 (g) The review of existing financial assurances shall not be
32 considered a project for the purposes of the California
33 Environmental Quality Act (Division 13 (commencing with Section
34 21000)).

35 SEC. 12. Section 2774 of the Public Resources Code is
36 amended to read:

37 2774. (a) Every lead agency shall adopt ordinances in
38 accordance with state policy that establish procedures for the
39 review and approval of reclamation plans and financial assurances
40 and the issuance of a permit to conduct surface mining operations,

1 except that any lead agency without an active surface mining
2 operation in its jurisdiction may defer adopting an implementing
3 ordinance until the filing of a permit application. The ordinances
4 shall establish procedures requiring at least one public hearing and
5 shall be periodically reviewed by the lead agency and revised, as
6 necessary, to ensure that the ordinances continue to be in
7 accordance with state policy.

8 (b) (1) (A) The lead agency shall conduct an inspection of a
9 surface mining operation within six months of receipt by the lead
10 agency of the surface mining operation's report submitted pursuant
11 to Section 2207, solely to determine whether the surface mining
12 operation is in compliance with this chapter. ~~A~~

13 (B) A lead agency shall not inspect a surface mining operation
14 less than once in any calendar year. The lead agency shall cause
15 an inspection to be conducted by an individual *who is* qualified
16 pursuant to paragraph ~~(2)~~; *(2) and who satisfies the provisions of*
17 *subdivision (c)*, including, but not limited to, a state-licensed
18 ~~geologist or geologist~~, state-licensed civil engineer, *state-licensed*
19 *landscape architect, state-licensed forester, or lead agency*
20 *employee who is experienced in land reclamation* and who has not
21 been employed by ~~a~~ *the* surface mining operation within the
22 jurisdiction of the lead agency in any capacity during the previous
23 ~~12 months, except that a lead agency employee who is not an~~
24 ~~independent contractor may inspect surface mining operations~~
25 ~~within the local agency provided the employee satisfies the~~
26 ~~provisions of paragraph (2) and subdivision (c). All months.~~

27 (C) *Notwithstanding subparagraph (B), a lead agency employee*
28 *who is qualified pursuant to paragraph (2) and who satisfies the*
29 *provisions of subdivision (c) may inspect a surface mining*
30 *operation owned or operated by the lead agency.*

31 (D) All inspections shall be conducted using a form developed
32 by the department and approved by the board that includes the
33 relevant professional licensing and disciplinary information of the
34 person qualified pursuant to paragraph (2) who conducted the
35 inspection. The operator shall be solely responsible for the
36 reasonable cost of the inspection. ~~The~~

37 (E) *The* lead agency shall notify the director within 60 days of
38 the date of completion of the inspection that the inspection has
39 been conducted. The inspection notice shall contain a statement
40 regarding the surface mining operation's compliance with this

chapter, shall include a copy of the completed inspection form, and shall specify which aspects of the surface mining operations, if any, are inconsistent with this chapter and those noncompliant aspects that have been corrected following the inspection, with proof of correction. For each remaining noncompliant aspect, the lead agency shall provide to the director a copy of the notice of violation, the notice of violation combined with an order to comply pursuant to Section 2774.1, or a statement that indicates the lead agency does not intend to initiate an enforcement action pursuant to Section 2774.1. If the surface mining operation has a review of its reclamation plan, financial assurances, or an interim management plan pending under subdivision (b) or (h) of Section 2770, or an appeal pending before the board or lead agency governing body under subdivision (e) or (h) of Section 2770, the inspection notice shall so indicate. The lead agency shall forward to the operator a copy of the inspection notice, a copy of the completed inspection form, and any supporting documentation, including, but not limited to, any inspection report prepared by the individual qualified pursuant to paragraph (2).

(2) (A) The department and the board, in consultation with the Board for Professional Engineers, Land Surveyors, and Geologists, shall adopt regulations that set forth the minimum qualifications for a person conducting an inspection of a surface mining operation pursuant to this chapter. The regulations shall delineate those aspects of an inspection that require the inspector to meet state licensure requirements.

(B) Beginning January 1 of the year following adoption of the regulations required pursuant to subparagraph (A), but not less than 180 days after adoption, all surface mine inspections shall be performed by a qualified individual.

(c) (1) On or before July 1, 2016, the department shall establish a training program for all surface mine inspectors. The program shall be designed to include a guidance document, developed by the department and approved by the board, to provide instruction and recommendations to surface mine inspectors performing inspections pursuant to subdivision (b).

(2) The training program shall include no less than four inspection workshops per year, offered by the department, in different regions of the state, to provide practical application of the guidance document material.

1 (3) On and after January 1, 2019, all inspectors shall have on
2 file with the lead agency and the department a certificate of
3 completion of an inspection workshop. An inspector shall attend
4 a workshop no later than five years after the date of his or her most
5 recent certificate.

6 (d) In addition to subdivision (b), lead agencies or the Supervisor
7 of Mines and Reclamation may inspect at any time a surface mining
8 operation to determine if the operation is in compliance with this
9 chapter and Section 2207.

10 (e) The approval of the guidance document by the board
11 pursuant to subdivision (c) is not the adoption of a regulation for
12 the purposes of the Administrative Procedure Act (Chapter 3.5
13 (commencing with Section 11340) of Part 1 of Division 3 of Title
14 2 of the Government Code) and is not subject to that chapter.

15 SEC. 13. Section 2774.1 of the Public Resources Code is
16 amended to read:

17 2774.1. (a) Except as provided in subdivision (i) of Section
18 2770, if the lead agency or the director determines, based upon an
19 annual inspection pursuant to Section 2774, or otherwise confirmed
20 by an inspection of the mining operation, that a surface mining
21 operation is not in compliance with this chapter, the lead agency
22 or the director may notify the operator of that violation by personal
23 service or certified mail. If the lead agency or the director
24 determines that the noted violations cannot be corrected within 30
25 days of the notice, the lead agency shall or the director may
26 combine the notice of violation with an order to comply. If the
27 violation extends beyond 30 days after the date of the lead agency's
28 or the director's notification, the lead agency or the director may
29 issue an order by personal service or certified mail requiring the
30 operator to comply with this chapter or, if the operator does not
31 have an approved reclamation plan or financial assurances, cease
32 all further mining activities.

33 (b) An order to comply issued under subdivision (a) shall take
34 effect 30 days following service unless the operator within that
35 30-day period requests a hearing before the lead agency for orders
36 issued by the lead agency, or the board for orders issued by the
37 director, concerning the alleged violation. An order to comply
38 shall specify which aspects of the surface mine's activities or
39 operations are inconsistent with this chapter, shall specify a time
40 for compliance that the lead agency or director determines is

1 reasonable, not to exceed two years, taking into account the
2 seriousness of the violation and any good faith efforts to comply
3 with applicable requirements, and may include an administrative
4 penalty imposed pursuant to subdivision (c). If a lead agency or
5 the director determines compliance with an order to comply will
6 exceed two years, the board may specify a longer period based on
7 an application and showing of good cause.

8 (c) (1) In an order to comply pursuant to subdivision (b), the
9 lead agency or the director may impose an administrative penalty
10 of not more than five thousand dollars (\$5,000) per day, assessed
11 from the original date of noncompliance with this chapter. The
12 penalty may be imposed administratively by the lead agency or
13 the director. In determining the amount of the administrative
14 penalty, the lead agency or the director shall take into consideration
15 the nature, circumstances, extent, and gravity of the violation or
16 violations, any prior history of violations, the degree of culpability,
17 economic savings, if any, resulting from the violation, and any
18 other matters justice may require.

19 (2) If an operator fails to comply with an order to comply that
20 did not originally impose an administrative penalty, or if an
21 operator fails to submit a report or pay annual fees to the director
22 or lead agency pursuant to Section 2207, the lead agency or director
23 may impose an administrative penalty pursuant to this paragraph.
24 The administrative penalty shall become effective upon issuance
25 of the assessment and payment shall be made to the lead agency
26 or the director within 30 days, unless the operator petitions the
27 legislative body of the lead agency, the board, or the superior court
28 for review as provided in Section 2774.2. An assessment shall be
29 served by personal service or by certified mail upon the operator.

30 (3) Penalties collected by the director shall not be used for
31 purposes other than to cover the reasonable costs incurred by the
32 director in implementing this chapter or Section 2207.

33 (d) If the lead agency or the director determines that the surface
34 mine is not in compliance with this chapter, so that the surface
35 mine presents an imminent and substantial endangerment to the
36 public health or the environment, the lead agency or the Attorney
37 General, on behalf of the director, may seek an order from a court
38 of competent jurisdiction enjoining that operation.

39 (e) Upon a complaint by the director, the department, or the
40 board, the Attorney General may bring an action to recover

1 administrative penalties under this section, and penalties under
2 Section 2207, in any court of competent jurisdiction in this state
3 against any person violating any provision of this chapter or Section
4 2207, or any regulation adopted pursuant to this chapter or Section
5 2207. The Attorney General may bring this action on his or her
6 own initiative if, after examining the complaint and the evidence,
7 he or she believes a violation has occurred. The Attorney General
8 may also seek an order from a court of competent jurisdiction
9 compelling the operator to comply with this chapter and Section
10 2207.

11 (f) (1) The lead agency has primary responsibility for enforcing
12 this chapter and Section 2207. In cases where the board is not the
13 lead agency pursuant to Section 2774.4, enforcement actions may
14 be initiated by the director pursuant to this section only after the
15 violation has come to the attention of the director and either of the
16 following occurs:

17 (A) The lead agency has been notified by the director in writing
18 of the violation for at least 30 days, and has not taken appropriate
19 enforcement action, which may include failing to issue an order
20 to comply within a reasonable time after issuing a notice of
21 violation.

22 (B) The director determines that there is a violation that amounts
23 to an imminent and substantial endangerment to the public health
24 or safety, or to the environment.

25 (2) The director shall comply with this section in initiating
26 enforcement actions.

27 (g) Remedies under this section are in addition to, and do not
28 supersede or limit, any and all other remedies, civil or criminal.

29 SEC. 14. Section 2774.4 of the Public Resources Code is
30 amended to read:

31 2774.4. (a) The board shall exercise some or all of a lead
32 agency's powers under this chapter pursuant to subdivision (c),
33 except for permitting authority and vested rights determinations
34 pursuant to Section 2776, if the board finds that a lead agency has
35 done any of the following:

36 (1) Approved reclamation plans or financial assurances that are
37 not consistent with this chapter.

38 (2) Failed to inspect or cause the inspection of surface mining
39 operations as required by this chapter.

1 (3) Failed to seize the financial assurances and to carry out the
2 reclamation of surface mining operations as required by this
3 chapter.

4 (4) Failed to take appropriate enforcement actions as required
5 by this chapter.

6 (5) Intentionally misrepresented the results of inspections
7 required under this chapter.

8 (6) Failed to submit information to the department as required
9 by this chapter.

10 (b) The board shall conduct a public hearing no sooner than
11 three years after the board has taken action pursuant to subdivision
12 (a) to determine if a lead agency has corrected its deficiencies in
13 implementing and enforcing this chapter and the rules and
14 regulations adopted pursuant to this chapter or has developed a
15 program that will adequately administer this chapter and Section
16 2207. If the board finds sufficient evidence of correction or the
17 development of a program to adequately implement this chapter
18 and Section 2207, the board shall restore to the lead agency some
19 or all of the powers assumed by the board pursuant to subdivision
20 (a).

21 (c) Before taking any action pursuant to subdivision (a), the
22 board shall first conduct a hearing, providing 30 days' notice to
23 the lead agency, and shall determine if the lead agency has engaged
24 in conduct described in subdivision (a). If the board finds that the
25 lead agency has engaged in conduct described in subdivision (a),
26 the board shall do either of the following:

27 (1) (A) Require the lead agency to develop a remedial plan to
28 correct the noted deficiencies. The remedial plan shall describe
29 specific objectives and corresponding processes designed to
30 address, at a minimum, the noted deficiencies and a time that the
31 remedial plan will be fully implemented.

32 (B) The board shall set a hearing to review the completion of
33 the remedial plan consistent with paragraph (2) and subdivisions
34 (d) and (e).

35 (2) Take immediate action pursuant to subdivision (a) and hold
36 a public hearing within the lead agency's area of jurisdiction, upon
37 a 45-day written notice given to the public in at least one newspaper
38 of general circulation within the city or county and directly mailed
39 to the lead agency and to all operators within the lead agency's

1 jurisdiction who have submitted reports as required by Section
2 2207.

3 (d) Affected operators and interested persons have the right at
4 the public hearing to present oral and written evidence on the
5 matter being considered. The board, at the public hearing, may
6 place reasonable limits on the right of affected operators and
7 interested persons to question and solicit testimony.

8 (e) (1) If the board decides to take action pursuant to subdivision
9 (a) and exercise some or all of a lead agency's powers pursuant to
10 this chapter, except for permitting authority and vested rights
11 determinations pursuant to Section 2776, the board shall, based
12 on the record of the public hearing, adopt written findings that
13 explain all of the following:

14 (A) The action to be taken by the board.

15 (B) Why the board decided to take the action.

16 (C) Why the action is authorized by and meets the requirements
17 of subdivision (a).

18 (2) In addition, the findings shall address the significant issues
19 raised or written evidence presented by affected operators,
20 interested persons, the lead agency, or the department and findings
21 from any review of the lead agency's administrative and
22 enforcement program. The transcript of testimony and exhibits,
23 together with all papers and requests filed in the proceedings, shall
24 constitute the exclusive record for decision by the board.

25 (f) If the board finds that the lead agency has not satisfactorily
26 completed the remedial plan prepared pursuant to paragraph (1)
27 of subdivision (c), the board shall follow the procedures set forth
28 in paragraph (2) of subdivision (c) and subdivisions (d) and (e).

29 (g) The lead agency, any affected operator, or any interested
30 person who has presented oral or written evidence at the public
31 hearing before the board pursuant to subdivision (d) may obtain a
32 review of the board's action taken pursuant to subdivision (a) by
33 filing in the superior court a petition for a writ of mandate within
34 30 days following the issuance of the board's decision. Section
35 1094.5 of the Code of Civil Procedure governs judicial proceedings
36 pursuant to this subdivision, except that in every case the court
37 shall exercise its independent judgment. If a petition for a writ of
38 mandate is not filed within the time limits set by this subdivision,
39 the board's action under subdivision (a) shall not be subject to
40 review by any court or agency.

1 SEC. 15. Section 2776 of the Public Resources Code is
2 amended to read:

3 2776. (a) (1) A person who has obtained a vested right to
4 conduct surface mining operations prior to January 1, 1976, shall
5 not be required to secure a permit pursuant to this chapter as long
6 as the vested right continues and as long as no substantial changes
7 are made in the operation except in accordance with this chapter.
8 A person shall be deemed to have vested rights if, prior to January
9 1, 1976, the person has, in good faith and in reliance upon a permit
10 or other authorization, if the permit or other authorization was
11 required, diligently commenced surface mining operations and
12 incurred substantial liabilities for work and materials necessary
13 for the surface mining operations. Expenses incurred in obtaining
14 the enactment of an ordinance in relation to a particular operation
15 or the issuance of a permit shall not be deemed liabilities for work
16 or materials.

17 (2) A lead agency shall maintain records associated with a vested
18 right determination.

19 (b) The reclamation plan required to be filed pursuant to
20 subdivision (b) of Section 2770 shall apply to operations conducted
21 after January 1, 1976, or to be conducted.

22 (c) Nothing in this chapter shall be construed as requiring the
23 filing of a reclamation plan for or the reclamation of mined lands
24 on which surface mining operations were conducted prior to
25 January 1, 1976.

26 SEC. 16. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 a local agency or school district has the authority to levy service
29 charges, fees, or assessments sufficient to pay for the program or
30 level of service mandated by this act, within the meaning of Section
31 17556 of the Government Code.